

## **Chapter 4: Permanent Bars to GMC**

### **A. Murder**

An applicant who has been convicted of murder at any time is permanently barred from establishing GMC for naturalization.<sup>1</sup>

### **B. Aggravated Felony**

In 1996, Congress expanded the definition and type of offense considered an “aggravated felony” in the immigration context.<sup>2</sup> An applicant who has been convicted of an “aggravated felony” on or after November 29, 1990, is permanently barred from establishing GMC for naturalization.<sup>3</sup>

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC.<sup>4</sup>

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence.<sup>5</sup> For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence.<sup>6</sup>

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

<b>“Aggravated Felonies” in the Immigration Context</b>	
<b>Aggravated Felony</b>	<b>Citation</b>
<b>Murder, Rape, or Sexual Abuse of a Minor</b>	<a href="#">INA 101(a)(43)(A)</a>
<b>Illicit Trafficking in Controlled Substance</b>	<a href="#">INA 101(a)(43)(B)</a>

<sup>1</sup> See [8 CFR 316.10\(b\)\(1\)\(i\)](#).

<sup>2</sup> See [INA 101\(a\)\(43\)](#). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (September 30, 1996).

<sup>3</sup> See [8 CFR 316.10\(b\)\(1\)\(ii\)](#).

<sup>4</sup> See [8 CFR 316.10\(a\)\(2\)](#).

<sup>5</sup> See [INA 101\(a\)\(48\)\(B\)](#). See *Matter of S-S-*, 21 I&N Dec. 900 (BIA 1997).

<sup>6</sup> See [INA 101\(a\)\(43\)\(F\) and \(G\)](#).

<b>“Aggravated Felonies” in the Immigration Context</b>	
<b>Aggravated Felony</b>	<b>Citation</b>
<b>Illicit Trafficking in Firearms or Destructive Devices</b>	<a href="#">INA 101(a)(43)(C)</a>
<b>Money Laundering Offenses (over \$10,000)</b>	<a href="#">INA 101(a)(43)(D)</a>
<b>Explosive Materials and Firearms Offenses</b>	<a href="#">INA 101(a)(43)(E)(i)–(iii)</a>
<b>Crime of Violence (imprisonment term of at least 1 yr)</b>	<a href="#">INA 101(a)(43)(F)</a>
<b>Theft Offense (imprisonment term of at least 1 yr)</b>	<a href="#">INA 101(a)(43)(G)</a>
<b>Demand for or Receipt of Ransom</b>	<a href="#">INA 101(a)(43)(H)</a>
<b>Child Pornography Offense</b>	<a href="#">INA 101(a)(43)(I)</a>
<b>Racketeering, Gambling (imprisonment term of at least 1 yr)</b>	<a href="#">INA 101(a)(43)(J)</a>
<b>Prostitution Offenses (managing, transporting, trafficking)</b>	<a href="#">INA 101(a)(43)(K)(i)–(iii)</a>
<b>Gathering or Transmitting Classified Information</b>	<a href="#">INA 101(a)(43)(L)(i)–(iii)</a>
<b>Fraud or Deceit Offenses or Tax Evasion (over \$10,000)</b>	<a href="#">INA 101(a)(43)(M)(i), (ii)</a>
<b>Alien Smuggling</b>	<a href="#">INA 101(a)(43)(N)</a>
<b>Illegal Entry or Reentry by Removed Aggravated Felon</b>	<a href="#">INA 101(a)(43)(O)</a>
<b>Passport, Document Fraud (imprisonment term of at least 1 yr)</b>	<a href="#">INA 101(a)(43)(P)</a>
<b>Failure to Appear Sentence (offense punishable by at least 5 yrs)</b>	<a href="#">INA 101(a)(43)(Q)</a>

<b>“Aggravated Felonies” in the Immigration Context</b>	
<b>Aggravated Felony</b>	<b>Citation</b>
<b>Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles</b>	<a href="#">INA 101(a)(43)(R)</a>
<b>Obstruction of Justice, Perjury, Bribery of Witness</b>	<a href="#">INA 101(a)(43)(S)</a>
<b>Failure to Appear to Court (offense punishable by at least 2 yrs)</b>	<a href="#">INA 101(a)(43)(T)</a>
<b>Attempt or Conspiracy to Commit an Aggravated Felony</b>	<a href="#">INA 101(a)(43)(U)</a>

## C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

### 1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi government of Germany is permanently barred from establishing GMC for naturalization.<sup>7</sup>

### 2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization.<sup>8</sup> The criminal offense of “genocide” includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;
- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or

<sup>7</sup> See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#).

<sup>8</sup> See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#). See [18 U.S.C. 2340](#) and [18 U.S.C. 1091\(a\)](#).

- Transferring by force children of the group to another group.<sup>9</sup>

### 3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for naturalization.<sup>10</sup>

“Torture” is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control.<sup>11</sup>

An “extrajudicial killing” is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.<sup>12</sup>

### 4. Particularly Severe Violations of Religious Freedom

An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC.<sup>13</sup> “Particularly severe violations of religious freedom” are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons.<sup>14</sup>

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<sup>9</sup> See [18 U.S.C. 1091](#). See Article II of the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (78 U.N.T.S. 278 [Dec. 9, 1948]).

<sup>10</sup> See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#).

<sup>11</sup> See [18 U.S.C. 2340](#).

<sup>12</sup> See [28 U.S.C. 1350 \(Note\)](#). See Section 3(a) of the Torture Victim Protection Act of 1991.

<sup>13</sup> See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(2\)\(G\)](#).

<sup>14</sup> See [22 U.S.C. 6402](#).